

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

|  |   |                      |
|--|---|----------------------|
| <b>JASON R. LUPTON</b>   | ) |                      |
| Claimant   | ) |                      |
| VS.  | ) |                      |
|  | ) | Docket No. 1,026,621 |
| <b>KANSAS MASONIC HOME</b>   | ) |                      |
| Respondent   | ) |                      |
| AND  | ) |                      |
|  | ) |                      |
| <b>KANSAS ASSOCIATION OF HOMES<br/>FOR THE AGING INSURANCE GROUP</b> | ) |                      |
| Insurance Carrier  | ) |                      |

**ORDER**

Respondent and its insurance carrier appealed the January 31, 2006, preliminary hearing Order entered by Administrative Law Judge Thomas Klein.

**ISSUES**

Claimant alleges he injured his left knee in November 2005 due to the work he was performing for respondent. In the January 31, 2006, Order, Judge Klein ordered respondent and its insurance carrier to provide claimant with a list of three physicians from which to select a treating physician.

Respondent and its insurance carrier contend Judge Klein erred. They argue claimant's injury arose from a personal condition and, therefore, his alleged accident did not arise out of his employment. They also argue claimant's work did not expose him to any risk greater than that incidental to normal day-to-day living activities. Consequently, respondent and its insurance carrier request the Board to deny claimant's request for workers compensation benefits. They also request the Board to strike claimant's brief as it was allegedly filed with the Board after its due date.

The only issues before the Board on this appeal are:

1. Should the Board strike the brief claimant filed with the Board?

2. Did claimant sustain an accidental injury that arose out of and in the course of his employment with respondent?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the file compiled to date, the Board finds and concludes:

Respondent employed claimant as a groundskeeper. In November 2005, claimant experienced a “very hard pop”<sup>1</sup> in his left knee and his knee gave way when he stood from a kneeling position. Within minutes, his knee was swollen. Before standing claimant had been on his knees for five or ten minutes cutting lirioppe.

But this is not the first time that claimant had injured his left knee. Before commencing work with respondent, claimant had three surgeries to repair his anterior cruciate ligament, plus a surgery to address infection in his knee and another surgery to remove a protruding staple. The last surgery, which was to remove the staple, occurred approximately three years ago or approximately six months after he began working for respondent. As a result of the staple surgery, claimant missed one day of work.

According to claimant, following those surgeries he had no restrictions or limitations. He was able to run and, more importantly, he did not experience any sensations of his knee catching or popping.

Claimant promptly reported the November 2005 incident and was referred to a clinic where he saw Dr. Kirkpatrick and Dr. Larry Wilkerson.

Respondent and its insurance carrier argue claimant’s injury resulted from a personal condition and, therefore, the injury did not arise out of claimant’s employment. They also argue claimant’s accident did not arise out of his employment because the work allegedly did not increase the risk of injury.

The Board concludes the preliminary hearing Order should be affirmed. The Board disagrees with respondent and its insurance carrier’s argument that claimant’s work did not increase his risk of injury. Claimant’s job required him to either squat or kneel or work on his hands and knees. Accordingly, claimant’s work activities *did* increase his risk of injury.

In summary, claimant sustained personal injury by accident while working for respondent. And the accidental injury arose out of claimant’s employment as the injury was caused by the specific work activity claimant was performing at the time. The Board

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<sup>1</sup> P.H. Trans. at 6.

is persuaded by claimant's analysis that he was hurt as a result of what he was doing at work. Accordingly, his accident is compensable under the Workers Compensation Act.

The Board has not considered claimant's brief, which was filed with the Board after its due date. Nonetheless, the Board has considered claimant's arguments that are set forth in the preliminary hearing transcript.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.<sup>2</sup>

**WHEREFORE**, the Board affirms the January 31, 2006, Order entered by Judge Klein.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March, 2006.

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BOARD MEMBER

c: Tom E. Hammond, Attorney for Claimant  
David L. Vogel, Attorney for Respondent and its Insurance Carrier  
Thomas Klein, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>2</sup> K.S.A. 44-534a(a)(2).